

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, AUGUST 2022**

CIVIL PROCEDURE AND PRACTICE I

MONDAY AUGUST 15, 2022

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.

- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (i) In answering any Part, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (j) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (k) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I AUGUST 2022 EXAMINATIONS, CIVIL PROCEDURE AND PRACTICE I DROP BOX on TWEN** by **TUESDAY, AUGUST 16, 2022 NOT LATER THAN** 9:00 a.m. (Jamaica), 8:00 a.m (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for **“Assignments and Quizzes”** located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between **1100 - 1185** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I – 1100 - 1185”**.

- Year I students with Examination ID numbers between **1186 - 1271** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1186 - 1271**”.
- Year I students with Examination ID numbers between **1272 - 1357** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1272 - 1357**”.

PART A

Lance Sly and Megan Fox are clients of your firm, Grand Moore & Associates, Attorneys-at-Law of 578 Georgian Road, Jurisdiction; telephone 000-123-5679; fax 000-345-0987 and email gla@lawyers.com, at which you are an associate. Your firm, some years ago, incorporated a company on their behalf, in your jurisdiction, named Sly & Fox Limited (“the company”) with registered office at 657 Seymour Drive, Jurisdiction. The company is a music record company. Lance and Megan are the only shareholders and directors of the company. The company employed Lance as the chief executive officer and Megan as the marketing manager. The company has a total staff complement of 15 employees.

Lance and Megan met with you today regarding claim number 000111HC2022, filed May 6, 2022, that was delivered at the company’s registered office yesterday. The claimant is Bob Wailer, who they instruct you is a songwriter the company had contracted to write songs for its contracted local artistes. The company is named as first defendant and Jessup Laing, a security guard employed by the company, as second defendant in the claim. Bob’s attorney-at-law is John Lead of the firm Lead & Company, Attorneys-at-Law of 5 Orange Way, Jurisdiction.

Lance provided you with a contract, dated December 1, 2019, between the company and Bob (“the contract”). He explained to you that Bob’s contract with the company was as a songwriter for a term of two years. During the term of the contract, Bob was to submit to the company two written songs every quarter. The songs written by Bob were for one of the company’s signed local artistes, who goes by the stage name Baja Boo.

Lance instructed you that clause 3 of the contract provides that every song written by the songwriter, during the term of the contract, is the songwriting copyright of the company. It is a further term at clause 4 of the contract that the company, in exchange for the songs, is to pay the songwriter a monthly stipend of \$200,000 on the 25th day of each month. Clause 4 also provides that the songwriter would receive 5% of all performance royalties collected by the company for each song that is performed on terrestrial broadcast radio, in a live performance venue, or via online streaming services. The contract further provides at clause 5 that the monthly stipend paid by the company to the songwriter is to be deducted from the performance royalties collected by the company for each song.

You are further instructed by Lance that clause 10 of the contract gives the company the right to approve all lyrics in songs submitted by the songwriter. Where any lyrics are not approved by the company, the company has the right to request the songwriter to rewrite or modify the lyrics. Where the song is not rewritten or modified by the songwriter within the time requested by the company, the company may rewrite or modify the song and the songwriter is not entitled to any royalties from any amended version of the song.

Megan has instructed you that she believes Bob has sued the company because he submitted lyrics for two songs on November 20, 2021, which the company did not like and had sent Bob a letter, dated January 15, 2022, requesting that he rewrite them. These two songs were the last two songs due under Bob's contract with the company, which expired on December 1, 2021.

Megan instructed you that, prior to the company writing to Bob, she and Lance had met with Bob on November 21, 2021, at about 4:00 p.m., to discuss the company's concerns with the lyrics of the two songs. The meeting was held in her office at the company. At the meeting she had expressed to Bob that his lyrics for those last two songs were not only incoherent but boring and would never appeal to Baja Boo's fans. Bob became very angry at what she said and shouted expletives at her. Megan instructed you that she told Bob it was best he leave her office in light of his behaviour, but he became even more furious and violent toward her, pushing off the things on her office desk to the floor, while cursing at her.

Lance instructed you that, when he saw Bob's aggressive behaviour toward Megan, he called out for Jessup, who was the security guard on duty that day. He instructed you further that when Jessup entered Megan's office and heard Bob, he told him it was time to leave. Bob, in turn, held onto Megan's desk and said he was not leaving her office until she paid him for the two songs or gave him back his songs, all the time still shouting expletives at her. Lance instructed you that, Jessup, who is tall in stature and muscular, then physically pulled Bob off of Megan's office desk, restrained him with hand cuffs, pushed him out of Megan's office, put him in the company's store room and locked the door.

Lance and Megan instructed you that, they could hear Bob from the office storeroom shouting expletives, demanding to be let out and threatening to kill Jessup and burn down the office building. Lance instructed you further that, after about an hour, Bob's outburst from the storeroom subsided and he became silent. It was then that Jessup opened the storeroom, removed the handcuffs from Bob and escorted him out of the company building.

Megan instructed you that, the whole incident with Bob was very bizarre to her and so she made some enquiries about him from other songwriters who knew Bob. She learnt that same evening that Bob's youngest son had been diagnosed a month ago with a rare disease that was causing him to incur significant medical expenses. Megan instructed you that, when she learnt of this, the company decided to give Bob an opportunity to redeem himself. This is when the company wrote to Bob requesting he rewrite the songs and giving him a deadline of two weeks to submit them.

Megan instructed you that, Bob did not meet the deadline to submit the rewritten songs. Nevertheless, the Company still paid him the monthly stipend of \$200,000 for the month of December 2021 by company cheque dated January 15, 2022 made payable to Bob. She instructed you further that, this would have been Bob's last monthly stipend under his contract with the company. Megan has instructed you that, all the company's cheques paid to Bob have been cashed and returned to the company by its bank, National Bank Limited.

Lance instructed you that, the two last songs Bob had submitted are useless to the company in their present state and have not been used. The other songs Bob had provided under the contract were good, but the music for them was still being perfected for recording and so they had not yet been released for air play. Megan instructed you that, Bob was notified of this by an email she sent to him on February 16, 2022, in response to an email the company had received from him on February 15, 2022, in which he had enquired if there were any royalties collected for him by the company as yet.

You have reviewed the Statement/Particulars of Claim and see that there is a claim against the company for damages for breach of contract, in which Bob has alleged that the company has failed to pay him his monthly stipend for the month of December 2021 and royalties for the songs he wrote and submitted to the company under the contract, including the two songs submitted in November 2021. There are further claims for damages for assault and battery and false imprisonment against the company, its servant and/or agent.

Lance and Megan instructed you that, while they have been sympathetic to Bob's situation, the company does not owe Bob anything and they will not allow him to 'milk' the company because of those two worthless songs he wrote. They enquired if there was any possibility for the claim against the company to be concluded quickly.

Required:

- (i) Advise Lance and Megan of any options(s) available to the company to obtain an early judgment, the procedural steps you would take to achieve the option(s) and the likelihood of success. **(Your advice must not exceed 1,200 words).**
- (ii) Draft the application, affidavit and draft formal order that you would file on behalf of the company to achieve the option you advised on at (i) above.
- (iii) At your meeting with Lance and Megan, Lance informed you that, he also had a personal matter for which he would like to engage your firm. He instructed you that he owns and lives in an apartment situated in a residential community. The issue he has been having is with a neighbour, Jerry Banton, a retired

musician he knows, who rents the adjoining apartment. Lance instructed you that Jerry's apartment is an end unit and his (Lance's) apartment is the only apartment adjoining it.

Lance instructed you further that, in December 2017, Jerry asked him if his company (Sly & Fox Limited) could give him and his friends some free studio time, for two days a week for one month only, to record an album, as he was not doing so well financially. Jerry promised that, after the album was created and released, he would pay the company for the studio time. Lance instructed you that, after discussing it with Megan, they made the decision not to give Jerry the studio time and he (Lance) told him so in January 2018.

Lance instructed you that, starting in August 2018, on Tuesdays, Thursdays and Sundays, at about 10:00 p.m., he observed several men, some of whom he recognized as musicians, going to Jerry's apartment. Shortly after, he would hear loud music from Jerry's apartment, which would continue up to 3:00 a.m., and sometimes 4:00 a.m., the next morning. Lance instructed you further that, when the loud music began, he was unable to sleep or hear anything until it stopped.

You are instructed by Lance that he has asked Jerry several times to stop playing the instruments so loudly but he has ignored him. He instructed you further that he made several reports to the police in 2018 and 2019 about the loud music but they have done nothing about it.

Lance further instructed you that, in December of 2018, he started having serious headaches, which he did not have before, and which have continued. He believes it started because of the sleepless nights he had been having due to Jerry's loud music. As a result, his doctor had prescribed very strong pain medication to help relieve the headaches. He has had to take the medication every day. He instructed you that he used to be able to work in the company's studio with the company's artistes but because he always has a headache, he

is unable to do so anymore. The company has had to hire a studio manager to carry out that function.

Lance instructed you that he has paid thousands of dollars for various tests recommended by his doctor, to investigate the cause of the continuing intense headaches, but nothing has come back conclusive. He informed you that he is scheduled to travel to the USA next week to do further tests at a neurological centre, which will cost him about US\$8,000.

You are further instructed by Lance that soon after he started having the headaches, in February 2019, he had to rent a furnished villa for US\$1,000 per month, a few blocks away from his apartment, so that on the nights when Jerry had loud music playing, he could go to the villa for rest and to sleep.

Lance instructed you that he has finally decided to take legal action against Jerry because when he went to the parking lot at his apartment today, he saw Jerry. Jerry's comment to him was, *"if you had given me the studio time I had asked for, you would have had the comfort of your own bed at nights."*

Required:

Advise Lance on the pre-litigation issues you would consider, giving reasons.
(Your advice must not exceed 1,200 words)

PART B

(This Part must be commenced on a new page and titled Part B)

The senior attorney at your firm, Marc Tweedy, has handed you the following statement:

"My name is Jamie-Lee Mitchell. I am married to Walter Mitchell and we are the parents of teenagers, Kym (16) and Max (13).

My children and I moved out of the home we shared with my husband six months ago, after a harrowing experience. Walter, who has always been violent, beat me with such ferocity that I ended up in the hospital. He sprained my wrist, gave me a black eye, and bruised my face and abdomen. The bruises on my abdomen were very painful. Initially, my doctors believed I had suffered damage to my organs but after x-rays were done, they found that this was not the case. I had suffered internal bruising only. I was discharged after one night.

The children and I moved into my parents' rental property, a two-bedroom apartment. It is smaller than we are used to, but it is relatively comfortable and we feel safe there. Unfortunately, our use of the property has deprived my parents of income from this source because I cannot afford to pay rent.

I work part-time, transcribing minutes for a large overseas company. This is the only job I have held since Walter and I got married. Walter was not happy about it, but agreed, as I worked from home and could still care for our children and the house. While we were together, I used the money I earned to purchase food and for my personal needs. I would also purchase new household items, such as curtains and kitchen appliances and would purchase paint and personally paint the house every year for Christmas. At times, when there were repairs to be done in the house, I would pay the workmen. Later, when the children were older, I provided them with lunch money too. I managed to save very little because I disliked asking Walter for money. He already bore the major expenses of our family and would snap at me whenever I did, and he was not in a good mood.

Since moving into the apartment, I have continued to work. I am able to buy food, provide the children with lunch money and cover their travel expenses, but I cannot afford utilities. My parents have had to pay our bills on a few occasions. I live in dread of one of us getting ill.

I earn US\$550 per month. Our food expenses are approximately US\$350 monthly. Utilities cost US\$150 per month. Lunch and transportation cost US\$120 and US\$150, respectively, each month. I have very little to cover my personal needs and have not been to the hairdresser or nail salon since leaving Walter. I have been using those items I already have for my personal care sparingly, as I have no way of replacing them.

Walter is a successful owner and operator of a funeral home. I do not know exactly how much he earns, but I know that he earns thousands of dollars per month. I have asked him for help with our expenses but he has refused to give me anything unless I return home.

While I am concerned about our financial position, I know it will be much worse when the new school year starts. Both children are starting new schools and will need new books and uniforms. Kym's new school is some distance away and Walter and I had agreed that she would take a bus operated by a service provider which we would pay for monthly. I cannot afford these expenses on my own.

I have tried to get a full-time job, but I have been invited to only one interview. The interviewer observed that my skills were limited and I did not get the job. I ended my education after one year at teacher's college. I was in college when Walter and I got married and he was adamant that I did not need a career. He assured me that he would take care of me and any children we had. He is 15 years older than I am and already owned the funeral home and our house when we met.

I moved in with Walter after our wedding. He lived in a house he had bought some years earlier and held a mortgage on it. I do not know how much he paid monthly but I know that he repaid the mortgage two years ago. It is a five-bedroom house and when we had it evaluated a year ago, for insurance purposes, it had a market value of US\$250,000. I want to claim my interest

in the house, but when I mentioned wanting my share of the house to Walter, he became angry and demanded to know what interest I was talking about.

Two months ago, I ran into an old high school friend, Brian. Since then, we have spent some time together and are getting closer. Walter has learnt of my friendship with Brian. He has started calling me regularly on my mobile phone, and when I refused to answer, he started calling the house. He calls at odd hours, demanding that I come back home. Sometimes he calls repeatedly, allowing the phone to ring for long periods of time. The children and I have been unable to sleep and I have resorted to turning my mobile phone off and unplugging the house phone. On three occasions in the last week, I have noticed Walter's car parked on the road outside the apartment complex late at night. It is unnerving to know he is watching my every move.

I have tried talking to Walter about our children, in an effort to get us to move on with our lives and co-parent amicably but each time I have tried, he has accused me of kidnapping his children and demanded that I come home. When I told him that I did not intend to, he told me that if I didn't come back to him, I would regret it. In one of his rants, I heard him mutter under his breath that I was lucky to have only ended up in the hospital that last time.

I have never reported Walter's behaviour to the police. I was urged to do it on the last occasion. I refused because I was happy just to be out of the situation and believed I was safe. Now I am worried and afraid. Before Walter started his harassment, the children and I were happy. Now, I jump when the phone rings. I am always looking out into the road to see if Walter is parked there. I find myself checking the doors and windows repeatedly, even waking in the middle of the night to do so.

Walter and I have been married for 18 years but the marriage is over. I want to move on. I wish I could do so without Walter's assistance, but I cannot

afford to take care of our needs on my own and I cannot rely on my parents, who are pensioners, for assistance. I will be in a better position when I have obtained a full-time job but even then, I will not be able to provide for myself and the children as we are used to. Already I have told them that there will be no camp for either of them this year.

Our circumstances would be greatly improved if I could claim my interest in the house, obtain maintenance for myself and the children and bring an end to my marriage and Walter's harassment."

Required:

1. Prepare an Opinion on:
 - (i) the order(s) Jamie-Lee may seek for protection, the legal bases for making the said order(s) and the procedural steps that can be taken to achieve the remedies sought; and
 - (ii) the legal bases on which an application for maintenance may be made, the procedural steps to be followed and the likelihood of success.

(Your opinion must not exceed **1,200 words**)

2. Prepare the documents you would file on Jamie-Lee's behalf in respect of her claim to an interest in the house. (You may assume any reasonable facts, not inconsistent with your instructions, which you deem necessary.)

END OF PAPER